



DEPARTMENT OF COMMERCE

15 CFR Part 4

Docket No. 210901-0175

RIN 0605-AA46

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Commerce, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Commerce's (Department) regulations under the Privacy Act. The Privacy Act regulations are being updated to make technical changes to include a System of Records Notice, COMMERCE/DEPT-27, to the Department's regulations concerning Privacy Act general and specific exemptions.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Departmental Privacy Act Officer, Office of Privacy and Open Government, Department of Commerce, 1401 Constitution Ave., NW, Mail Stop 61025, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Tahira Murphy, Departmental Privacy Act Officer, (202) 410-8075, Office of Privacy and Open Government, Department of Commerce, 1401 Constitution Ave., NW, Mail Stop 61025, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

This rule updates the Department of Commerce's (Department) regulations under the Privacy Act (5 USC 552a). In particular, the action amends the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department-wide systems of records notices published since the last time the regulations were updated.

The updates of the Privacy Act regulations in Title 15 of the Code of Federal Regulations, subpart B of part 4 incorporate changes to the language of the regulations in the following provisions: § 4.33 (General exemptions); and § 4.34 (Specific exemptions).

Comments on the Proposed Rule

The Office of the Secretary received three comments on the proposed rule (82 FR 56, January 3, 2017) that were within the scope of this rulemaking from members of the public. The comments on the proposed rule can be viewed and downloaded at the following link:

<https://www.regulations.gov/document/DOC-2017-0003-0001/comment>. No changes have been made to the regulatory text of the proposed rule in response to these three comments. The following are the comments and our corresponding responses.

Comment 1: There should be no exemptions to the Freedom of Information Act (FOIA). It is in the best interest of the public to access Commerce information.

Response: This rulemaking has nothing to do with FOIA. The Privacy Act prohibits the disclosure of a record about an individual from a system of records absent the written consent of the individual unless the disclosure is pursuant to one of twelve statutory exceptions. However, the Privacy Act does provide individuals with a means by which to seek access to and amendment of their records and sets forth various agency record-keeping requirements.

Comment 2: Please include provision for each department that: upon receipt of any request directed to one department falling in the purview of the other, that department's FOIA designee shall immediately re-direct and/or forward the request to the appropriate department AND advise sender of the action taken and to whom follow-up requests may be made; AND if the request is within 72 hours prior to any deadline which may apply to the request received, a seven-day extension shall automatically be granted for the original submission forwarded to the proper department.

Response: All FOIA requests are to be directed to eFOIA@doc.gov and will be distributed to the proper organization or individual for a response.

Comment 3: I was redirected to this website from an article who's title included the phrase "A simple guide." Looking around I can see that this site and the information therein is anything but. I'm concerned with this administrations concerted effort at obfuscating and misdirecting from their continued efforts to take power away from the people and into the hands of the government and its corporate lobbyists. Naturally the Freedom of Information Act is of the utmost importance to the ability of the American people to discern a number of things concerning to them especially regarding the actions of our government and its corporate interests. So you can imagine that I find it disturbing when even this proposed rule is veiled in language the average American cannot understand. Please consider simplifying the language of proposed legislation so that the American People may adequately understand and comment on it.

Response: This revision does not prevent individuals from requesting information through a FOIA request. This rule revises the Department's Privacy Act regulations regarding applicable exemptions to reflect new Department-wide systems of records notices published since the last time the regulations were updated. Any questions regarding clarification should be addressed to the Department Privacy Act Officer.

Changes Between the Proposed Rule and Final Rule

This final rule makes no changes to the regulatory text of the proposed rule.

Classification

This final rule has been determined to be not significant for purposes of review under Executive Order 12866. In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has reviewed this rule and certified that this regulation, if implemented, will not have a significant economic impact on a substantial number of small entities. This rule is procedural in nature, and, therefore, will not affect requesters. This regulation does not contain a collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 15 CFR Part 4

Appeals, Freedom of Information Act, Information, Privacy, Privacy Act.

Jennifer Goode,
*Deputy Director and Acting Director of Office of Privacy
and Open Government, and Departmental Privacy Officer*

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4 - Disclosure of Government Information

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

2. Amend § 4.33 by adding paragraph (b)(5) to read as follows:

§ 4.33 - General exemptions

* * * * *

(b) * * *

(5) *Investigation and Threat Management Records* – COMMERCE/DEPT-27.

Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity of the agency, to prevent disclosure of classified information as required by Executive Order 13526, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the

confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

3. Amend § 4.34 by:

- a. Revising paragraphs (a)(1), (b)(1), and paragraph (b)(2)(i) introductory text;
- b. Adding paragraph (b)(2)(i)(G); and
- c. Revising paragraph (b)(4)(i).

The addition and revisions read as follows:

§ 4.34 - Specific exemptions

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are: COMMERCE/BIS-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE/PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, COMMERCE/DEPT-14, COMMERCE/DEPT-25, and COMMERCE/DEPT-27.

* * * * *

(b)* * *

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT-12, COMMERCE/BIS-1, COMMERCE/NOAA-5, COMMERCE/DEPT-25, and COMMERCE/DEPT-27 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b) is held to be invalid.

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(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

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(G) Investigation and Threat Management Records- COMMERCE/DEPT-27, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid;

* * * * *

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

- (A) Applications to U.S. Merchant Marine Academy (USMMA) - COMMERCE/MA-1;
- (B) USMMA Midshipman Medical Files - COMMERCE/MA-17;
- (C) USMMA Midshipman Personnel Files - COMMERCE/MA-18;
- (D) USMMA Non-Appropriated Fund Employees - COMMERCE/MA-19;
- (E) Applicants for the NOAA Corps - COMMERCE/NOAA-I;
- (F) Commissioned Officer Official Personnel Folders - COMMERCE/NOAA-3;
- (G) Conflict of Interest Records, Appointed Officials - COMMERCE/DEPT-3;
- (H) Investigative and Inspection Records - COMMERCE/DEPT-12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;
- (I) Investigative Records - Persons within the Investigative Jurisdiction of the Department COMMERCE/DEPT-13;
- (J) Litigation, Claims, and Administrative Proceeding Records- COMMERCE/DEPT-14;
- (K) Access Control and Identity Management System - COMMERCE/DEPT-25, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid; and
- (L) Investigation and Threat Management Records - COMMERCE/DEPT-27, but only on condition that the general exemption claimed in § 4.33(b)(4) is held to be invalid.

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